



ATTENTION

Probate cases on this calendar are currently under review by the probate examiners. Review of some probate cases may not be completed and therefore have not been posted.

If your probate case has not been posted please check back again later.

Thank you for your patience.

DOD: 7/29/2005		LORRAINE GIRAGOSIAN,	NEEDS/PROBLEMS/COMMENTS:
		Administrator, is petitioner.	
		Accounting is waived.	Continued from 7/17/14. Minute order states the court needs an itemization of costs and also an explanation of why a surcharge should not be charged for statutory fees paid out that were not authorized by this court. As of 8/18/14 no additional documents have been filed.
Cont. from 071714		I & A - \$96,442.97	1. Need itemization of costs.
<input type="checkbox"/>	Aff.Sub.Wit.	POH - \$96,442.97	
<input checked="" type="checkbox"/>	Verified	Administrator - not addressed	Note: This estate was opened in 2006 (8 years ago). It appears that the estate has been distributed and attorney fees paid without court authority. California Rules of Court, Rule 7.700 (a) states no compensation in advance of court order. The personal representative must neither pay nor receive, and the attorney for the personal representative must not receive, statutory commissions or fees or fees for extraordinary services in advance of an order of the court authorizing their payment. (b) Surcharge for payment or receipt of advance compensation. In addition to removing the personal representative and imposing any other sanctions authorized by law against the personal representative or the attorney for the personal representative, the court may surcharge the personal representative for payment or receipt of statutory commissions or fees or fees for extraordinary services in advance of an order of the court authorizing their payment. The surcharge may include interest at the legal rate from the date of payment.
<input checked="" type="checkbox"/>	Inventory		
<input type="checkbox"/>	PTC	N/A	Please see additional page
<input checked="" type="checkbox"/>	Not.Cred.	Attorney - \$3,858.00 (statutory) already paid.	
<input checked="" type="checkbox"/>	Notice of Hrg	Costs - \$1,133.00 (not itemized) already paid.	Reviewed by: KT
<input checked="" type="checkbox"/>	Aff.Mail	W/	
<input type="checkbox"/>	Aff.Pub.	Distribution, pursuant to intestate succession, is to:	Reviewed on: 8/19/14
<input type="checkbox"/>	Sp.Ntc.		
<input type="checkbox"/>	Pers.Serv.	Lorraine Giragosian - \$96,442.97	Updates:
<input checked="" type="checkbox"/>	Conf. Screen		
<input checked="" type="checkbox"/>	Letters		Recommendation:
<input type="checkbox"/>	Duties/Supp		
<input type="checkbox"/>	Objections		File 1 – Benson
<input type="checkbox"/>	Video Receipt		
<input type="checkbox"/>	CI Report		
<input checked="" type="checkbox"/>	9202		
<input checked="" type="checkbox"/>	Order		
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<input type="checkbox"/>	UCCJEA		
<input type="checkbox"/>	Citation		
<input type="checkbox"/>	FTB Notice	N/A	

Note continued: Cal. Civ. Prac. Probate and Trust Proceedings § 1:13 indicates the attorney's ethical duty to diligently pursue the matter also requires that the attorney not unduly prolong administration of the estate and distribution of estate assets. [See *Ridge v. State Bar* (1989) 47 Cal 3d 952, 254 Cal Rptr 803, 766 P2d 569 (attorney acting as executor not insulated from censure for unduly prolonged probate); see also *Weber v. State Bar* (1988) 47 Cal 3d 492, 253 Cal Rptr 573, 764 P2d 701, cert den 490 US 1009, 104 L Ed 2d 163, 109 S Ct 1649 (delay in distribution of assets)] In addition to this ethical consideration, the Probate Code specifically addresses the time for closing an estate. [See Prob. Code, §§ 12200 to 12206 (time for closing estate)]

Petition for Exclusive Authority to give Consent for Medical Treatment

Age: 75		PUBLIC GUARDIAN , Conservator of the Person and Estate, is Petitioner and requests medical consent powers.	NEEDS/PROBLEMS/COMMENTS: Court Investigator advised rights on 08/07/14.
		Declaration of Ara Soghomonian, M.D. filed 07/14/14.	
Cont. from		Court Investigator Jennifer Daniel filed a report on 08/14/14.	
<input type="checkbox"/>	Aff.Sub.Wit.		
<input checked="" type="checkbox"/>	Verified		
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<input type="checkbox"/>	Duties/Supp		
<input type="checkbox"/>	Objections		
<input type="checkbox"/>	Video Receipt		
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<input type="checkbox"/>	9202		
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<input type="checkbox"/>	Status Rpt		
<input type="checkbox"/>	UCCJEA		
<input type="checkbox"/>	Citation		
<input type="checkbox"/>	FTB Notice		
			Reviewed by: JF
			Reviewed on: 08/19/14
			Updates:
			Recommendation:
			File 2 - Campbell

(1) First and Final Report of Personal Representative, (2) Petition for Final Distribution and (3) Confirmation of Ownership of Real Property on Waiver of Accounting

DOD: 7-1-12		<p>GEORGE P. PAPPAS, Executor with Full IAEA without bond, is Petitioner.</p> <p>Accounting is waived.</p> <p>I&A: \$87,778.00 POH: Decedent's undivided 1/6 interest in certain real property APN 065-020-55S valued at \$41,667.00</p> <p>Executor: Waived</p> <p>Attorney: Because there are no cash assets in the estate, Petitioner requests that attorney fees for services in this estate be paid from the Philon P. Pappas 2005 Revocable Trust, which is the sole beneficiary of the estate, in a reasonable amount agreed upon by the attorneys and the trustee.</p> <p>Distribution pursuant to Decedent's will: George P. Pappas, Trustee of the Philon P. Pappas 2005 Revocable Trust: Entire estate consisting of Decedent's undivided 1/6 interest in certain real property APN 065-020-55S valued at \$41,667.00</p> <p>In addition: Petitioner states it was believed that certain real property was owned 100% by Pappas Family Farms I, a California general partnership, which was recently converted to Pappas Family Farms I, LP, a California limited partnership. Following his death, a sale was negotiated with a prospective buyer; however, it was then discovered that the Decedent had retained title to a portion of the real property. Petitioner was appointed Special Administrator in order to facilitate the sale. At this time, the sale of certain property has taken place and a portion of the real property known as 019-040-10 remains. See Petition for details. Therefore, Petitioner also requests that the real property known as APN 019-040-10 and 019-040-07, and any proceeds from the sale of any portion of such real property, be confirmed as being owned by Pappas Family Farms I, LP, a California Limited Partnership.</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p><u>Minute Order 7-31-14:</u> The Court requests a declaration to address future attorney fees, if any. Continued to 8-21-14.</p> <p><i>As of 8-19-14, nothing further has been filed. The following issue remains:</i></p> <p>1. Petitioner requests that the Court authorize attorney fees for this estate in "a reasonable amount agreed upon by the attorneys and the trustee." The Court cannot authorize an amount higher than the statutory rate, which is \$3,511.12 per Probate Code §10810. An agreement for an amount higher than that is void. Probate Code §10813. If extraordinary compensation is requested, the request must comply with applicable law, Cal. Rules of Court 7.703, and Local Rule 7.18.</p> <p>Therefore, at this time, the Court can authorize compensation up to \$3,511.12 only in connection with this estate.</p> <p><u>Note:</u> The proposed order submitted 9-30-14 omits any mention of attorney fees. The Court may require a revised order with specific language addressing fees as appropriate.</p>	
Cont from 073114				
<input type="checkbox"/>	Aff.Sub.Wit.			
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<input checked="" type="checkbox"/>	Not.Cred.			
<input checked="" type="checkbox"/>	Notice of Hrg			
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<input type="checkbox"/>	Aff.Pub.			
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<input type="checkbox"/>	Conf. Screen			
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<input type="checkbox"/>	Duties/Supp			
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<input checked="" type="checkbox"/>	Order			
<input type="checkbox"/>	Aff. Posting			
<input type="checkbox"/>	Status Rpt			
<input type="checkbox"/>	UCCJEA			
<input type="checkbox"/>	Citation			
<input checked="" type="checkbox"/>	FTB Notice			
		Reviewed by: skc		
		Reviewed on: 8-19-14		
		Updates:		
		Recommendation:		
		File 4 – Pappas		

		NO TEMPORARY REQUESTED	NEEDS/PROBLEMS/COMMENTS: Court Investigator advised rights on 6-3-14. Voting rights affected - Need minute order Continued from 7-3-14. As of 8-19-14, the following issues remain: <u>SEE ADDITIONAL PAGES</u>
		LINDA JAMES , Paternal Grandmother, is Petitioner and requests appointment as Conservator of the Person with medical consent powers, and as Conservator of the Estate without bond.	
Cont 070314		Voting rights affected Estimated value of estate: Annual income from Alameda Co. Public Guardian: \$4,800.00 (See <i>NEEDS/PROBLEMS/COMMENTS</i>) A Capacity Declaration was filed on 5-21-14. Petitioner states the proposed Conservatee cannot talk, walk, feed herself, dress herself, bathe herself, or provide for any of her needs. She must be tube-fed, must be given her medications every two hours 24 hours a day, and is confined to a bed or wheelchair 24 hours a day. All of her needs are attended to by Petitioner on a 24 hour a day basis 7 days a week. The proposed Conservatee is cared for in Petitioner's home. Regarding the estate: The \$400/month received by Petitioner for the care of the proposed Conservatee is used for personal needs and entertainment such as movies. The check is payable to Petitioner. No other funds are directly received by the Proposed Conservatee. There is also a trust, which is administered by Bank of the West as trustee. The trust issues a check to Petitioner in the amount of \$988/month for the 24/7 care of the proposed Conservatee, and also recently purchased a van for her transport. Court Investigator Charlotte Bien filed a report on 6-24-14.	
	Aff.Sub.Wit.		
✓	Verified		
	Inventory		
	PTC		
	Not.Cred.		
✓	Notice of Hrg		
✓	Aff.Mail	W	
	Aff.Pub.		
	Sp.Ntc.		
✓	Pers.Serv.	W	
✓	Conf. Screen		
	Letters	X	
✓	Duties/Supp		
	Objections		
✓	Video Receipt		
✓	CI Report		
	9202		
	Order	X	
	Aff. Posting		
	Status Rpt		
	UCCJEA		
✓	Citation		
	FTB Notice		
			Reviewed by: skc Reviewed on: 8-19-14 Updates: Recommendation: File 7 – Moreno-Long

NEEDS/PROBLEMS/COMMENTS (Continued):

1. It appears from file documents that the proposed Conservatee has two sources of funds:

The first is a trust, for which Bank of the West is trustee. Bank of the West was given notice of this petition and hearing. Petitioner states she receives an income of \$988/week from the trustee for her services in caring for the proposed Conservatee. *(Examiner's Note: At Attachment 1(c) to the petition, Petitioner requests appointment as conservator of the estate without bond because the trustee is a professional trust fiduciary. However, the conservator of the estate would not have access to or control of the trust funds, which are subject to a trust agreement; therefore, the existence of this trust has no bearing on the bond requirement for the conservator. Also see #5.)*

The second is a separate existing guardianship estate with Alameda County Superior Court for which the Alameda County Public Guardian has been the Guardian of the Estate and disburses funds of \$400.00/month to Petitioner for the personal needs of the proposed Conservatee.

In this petition, Petitioner requests appointment as Conservator of the Estate, and at #3e of the petition, estimates that the conservatorship estate would consist of \$4,800 annual income, which is the \$400/month received from the Alameda County Public Guardian for Sierra's personal needs.

The petition does not appear to reference or request control of the entirety of the guardianship estate currently held by the Alameda County Public Guardian, which according to the Court Investigator's report is approx. \$174,000.00 at this time.

However, the existing guardianship estate, and any disbursements therefrom, including the \$400/month disbursed to Petitioner by the Alameda County Public Guardian for Sierra's personal needs, continues to be subject to the jurisdiction of Alameda County Superior Court until a final account is filed and distribution to a successor is ordered pursuant to Probate Code §2630.

Therefore, need clarification: Is Petitioner seeking conservatorship of the estate for only the \$400/month disbursed from the Alameda County Public Guardian for the personal needs of the proposed Conservatee, and expecting that the existing guardianship estate will remain in place, or is Petitioner seeking conservatorship of the estate for control of the entirety of the guardianship estate, now that the proposed Conservatee has reached majority?

Note: According to the Court Investigator's report, the Alameda County Public Guardian has referred the matter to the Fresno County Public Guardian to investigate the possibility of conservatorship of the person and estate for the proposed Conservatee now that she has reached majority.

Note: The Alameda County Public Guardian (current Guardian of the Estate for the proposed Conservatee) has now been given notice of this petition and hearing.

NEEDS/PROBLEMS/COMMENTS (Continued):

2. Petitioner's Declaration filed 6-26-14 states the proposed Conservatee does not have funds being paid directly to her from the Bank of the West; therefore, "no conservatorship of the estate is required." This declaration appears to refer only to the trust and states no conservatorship of the estate is required; however, it does not appear to specifically withdraw the request for conservatorship of the estate, and also does not mention the guardianship estate funds that are currently under the control of the Alameda County Public Guardian, which appear to be the funds that Petitioner specifically references in the petition at #3e. Therefore, need clarification: Is petitioner withdrawing the request for conservatorship of the estate?
3. Petitioner requests appointment as conservator of the estate without bond with reference to the fact that the trustee is a professional trust fiduciary. However, as previously noted, the trust is separate from the proposed conservatorship estate, which appears to consist of funds that would be received from the existing guardianship estate with the Alameda County Public Guardian.

Pursuant to Cal. Rules of Court 7.207, except as otherwise provided by statute, every conservator or guardian of the estate appointed after 12/31/2007 must furnish a bond including a reasonable amount for the cost of recovery to collect the bond under Probate Code 2320(c)(4)).

Therefore, upon clarification of what the conservatorship estate will consist of, if conservatorship of the estate is granted, the Court may order bond in an appropriate amount, which would be at least \$191,400.00 based on the approximate value of the estate provided by the Court Investigator's report.

4. Need order.
5. Need Letters.

Note: If the petition for conservatorship of the estate is granted, the Court will set status hearings as follows:

- Thursday 10-9-14 at 9:00 a.m. in Department 303, for the filing of the bond.
- Thursday 1-22-15 at 9:00 a.m. in Department 303, for the filing of the inventory and appraisal.
- Thursday 1-18-16 at 9:00 a.m. in Department 303, for the filing of the first account.

Pursuant to Local Rule 7.5 if the required documents are filed 10 days prior the date set the status hearing will come off calendar and no appearance will be required.

Petition for Probate of Will and for Letters Testamentary; Authorization to Administer Under IAEA (Prob. C. 8002, 10450)

[illegible]

Petition for Letters of Administration; Authorization to Administer Under IAEA (Prob. C. 8002, 10450)

DOD: 03/13/2006		STEPHEN CAVOLA , son is petitioner and requests appointment as Administrator without bond.	NEEDS/PROBLEMS/COMMENTS:
		Sole Heir waives bond	<p>Note: If the petition is granted status hearings will be set as follows:</p> <ul style="list-style-type: none"> • Thursday, 01/22/2015 at 9:00a.m. in Dept. 303 for the filing of the inventory and appraisal <u>and</u> • Thursday, 10/22/2015 at 9:00a.m. in Dept. 303 for the filing of the first account and final distribution. <p>Pursuant to Local Rule 7.5 if the required documents are filed 10 days prior to the hearings on the matter the status hearing will come off calendar and no appearance will be required.</p>
Cont. from		Full IAEA – o.k.	
<input type="checkbox"/>	Aff.Sub.Wit.	Decedent died intestate	
<input checked="" type="checkbox"/>	Verified	Residence: Fresno	
<input type="checkbox"/>	Inventory	Publication: The Business Journal	
<input type="checkbox"/>	PTC	Estimated value of the Estate:	
<input type="checkbox"/>	Not.Cred.	Real property - \$240,000.00	
<input checked="" type="checkbox"/>	Notice of Hrg	Less encumbrances - \$90,000.00	
<input checked="" type="checkbox"/>	Aff.Mail	Total - \$150,000.00	
<input checked="" type="checkbox"/>	Aff.Pub.	Probate Referee: Rick Smith	
<input type="checkbox"/>	Sp.Ntc.		
<input type="checkbox"/>	Pers.Serv.		
<input type="checkbox"/>	Conf. Screen		
<input checked="" type="checkbox"/>	Letters		
<input checked="" type="checkbox"/>	Duties/Supp		
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<input type="checkbox"/>	Citation		
<input type="checkbox"/>	FTB Notice		
			Reviewed by: LV
			Reviewed on: 08/19/2014
			Updates:
			Recommendation: Submitted
			File 10 - Cavola

Atty
Atty
Atty
Atty

Status Hearing Re: Settlement Agreement

		CINDY SNOW HENRY filed Notice of Motion and Motion to Compel Performance under Settlement Agreement on 3-15-11. Ms. Henry also filed Petition to Remove Trustee; Appoint Public Administrator as Trustee; Require Trustee Correct Title; and Compel Trustee to Account on 11-5-12. The Court has held various settlement conferences and Court Trial hearings since then, including re: lot split and related matters. On 3-3-14, the Court granted Ms. Henry's petition filed 11-5-12. Minute Order 3-3-14 states: The Court removes Louis Brosi, Jr. as the trustee and appoints Doris Brosi as successor trustee. An offer is made in open court. Mr. Gilmore's client is directed to respond to the offer by no later than 5:00 p.m. on 3/5/14. Parties agree that Mr. Armo's client will be paid in full \$100,000.00 by the close of business tomorrow with a joint check made out to both Mr. Armo and Robert Snow. The litigation guarantee and appraisal as to 6706 N. Chestnut shall be due by 3/12/14. Additionally, the \$100,000.00 payment to Cindy Snow Henry as well as the first monthly installment shall be due by 4/1/14. Continued to 4/1/14 @ 10:00 a.m. Dept. 303 At continued settlement conference on 6-3-14, the Court made additional orders. Minute Order 6-3-14 states: Parties engage in settlement discussions with the Court. Parties reach a settlement agreement as fully set forth on the record. Parties agree that the petitions will be dismissed with prejudice and the hearings set for 6/9/14 will be vacated. The Court notes that Cindy Snow Henry is not present, but has been in contact with Mr. Gilmore. Upon inquiry by the Court, Louis Brosi, III and Mr. Gilmore on behalf of his client agree to the terms and conditions of the agreement. Agreement to be prepared by Mr. Gilmore and provided to Mr. Franco by 6/6/14. Matter set for Status Hearing on 6/24/14. If everything is completed by 6/24/14, no appearances will be necessary and the matter will be taken off calendar. Set on 6/24/14 @ 9:00 a.m. Dept. 303 for: Status Hearing Re: Settlement Agreement	NEEDS/PROBLEMS/COMMENTS: Minute Order 6-24-14: Mr. Gilmore reports that the agreement has been signed by all parties on Mr. Franco's side. Continued to 7-8-14. Minute Order 7-8-14: Continued to 8-21-14 1. Need order approving Ms. Henry's petition filed 11-5-12 pursuant to the Minute Order of 3-3-14. 2. Need agreement per Minute Order 6-3-14. 3. On 3-3-14, the Court appointed Doris Brosi as trustee. However, Doris Brosi has not made an appearance in this matter. Therefore, a filing/appearance fee of \$435 is due from Doris Brosi.
Cont from 062414, 070814			
Aff.Sub.Wit.			
Verified			
Inventory			
PTC			
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Notice of Hrg			
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Citation			
FTB Notice			

Age: 14 years DOB: 1/16/2000	FRANCES GONZALES , paternal grandmother, was appointed guardian of the estate on 4/29/2013. Letters issued on 05/23/2013. Minute Order of 04/29/2013 set this matter for hearing for the filing of the First Account.	NEEDS/PROBLEMS/COMMENTS: <u>OFF CALENDAR. FIRST ACCOUNT FILED ON 08/12/2014. HEARING SET FOR 09/18/2014.</u>
Cont. from 062714		
Aff.Sub.Wit.		
Verified		
Inventory		
PTC		
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Notice of Hrg		
Aff.Mail		
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Status Rpt		
UCCJEA		
Citation		
FTB Notice		
Reviewed by: LV		
Reviewed on: 08/19/2014		
Updates:		
Recommendation:		
File 12 - Gonzales		

**Ex Parte Petition to Remove Gary Hamilton as Trustee and Appoint Interim Trustee
Pending Final Hearing**

DOD: 03/13/11		<p>JAMIE STAR HAMILTON THOMAS, beneficiary, is Petitioner.</p> <p>Petitioner states:</p> <ol style="list-style-type: none"> 1. She is a beneficiary of the JAMES O. HAMILTON LIVING TRUST dated 04/16/03, as amended on 12/20/07 (the "Trust"). 2. The initial trustee of the Trust was James O. Hamilton. The nominated successor trustee was Gary Hamilton ("Gary"). Gary has been the acting successor trustee since James O. Hamilton's death on 03/13/11. 3. The Trust provides that after the death of James O. Hamilton, the successor trustee should divide the trust assets into four shares for each of four beneficiaries: the Petitioner (Jamie Starr Hamilton Thomas), Joel Wade Hamilton ("Wade"), Cynthia Ann Thomas, and Richard Allen Thomas. The trustee shall make monthly payments of \$1,000.00 each to the four beneficiaries once that beneficiary reaches 60 years of age. If the assets of the Trust are not liquid, then the trustee must use his best efforts to liquidate the assets of the Trust to make these payments. 4. At the time James O. Hamilton passed away, the Petitioner was over 60 years of age. Accordingly, she was entitled to monthly payments of \$1,000.00 starting March 13, 2011. Despite the clear provisions of the Trust, Gary has not made a single payment to Petitioner from the assets of the Trust. 5. On 06/03/13, Petitioner filed a Verified Petition for (1) Removal of Trustee; (2) Accounting; (3) Surcharge; and (4) Approval of Attorney Fees (the "Petition"). The Petition asked the Court to remove Gary as trustee of the Trust and to appoint an independent third-party as trustee. <p align="center">Continued on Page 2</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p>CONTINUED FROM 07/22/14 Minute Order from 07/22/14 states: Mr. Milnes is appearing as counsel for Jamie Thomas.</p> <p>Declaration of Tiffany L. Winchell Regarding Scheduling Meet and Confer Re: Status filed 08/15/14 states: Messages were left on 08/05/14, 08/08/14 and 08/14/14 with Mr. Milnes office to schedule a meet and confer telephone conference, but no response has been received from Mr. Milnes.</p> <ol style="list-style-type: none"> 1. Need proof of personal service at least 5 days prior to the hearing (per Order on Ex Parte Petition) filed 04/14/14. Note: Proof of service filed 04/21/14 states that a copy of the Ex Parte Petition was personally served on Paul Pimentel, attorney for Gary Hamilton, on 04/17/14; and proof of service filed 06/19/14 states that all parties were served by mail and fax on 06/18/14. 	
Cont. from 042214, 042914, 062414, 072214				
<input type="checkbox"/>	Aff.Sub.Wit.			
<input checked="" type="checkbox"/>	Verified			
<input type="checkbox"/>	Inventory			
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<input type="checkbox"/>	UCCJEA			
<input type="checkbox"/>	Citation			
<input type="checkbox"/>	FTB Notice			

Reviewed by: JF

Reviewed on: 08/19/14

Updates:

Recommendation:

File 1A – Hamilton

6. Gary filed a response to the Petition (the "Objection") stating that he had provided a trust accounting in October 2012 (the "Purported 2012 Accounting"). The Purported 2012 Accounting is not an accounting, but rather a list of assets of the Trust. The list includes two "missing items", namely gold coins worth \$245,000.00 and \$28,000.00 in cash.
7. Gary further admitted that he had purchased 20 acres in Fresno County (the "Fresno Property") from James O. Hamilton and given the Trust a promissory note for \$297,000.00 related to the purchase. Gary also gave the Trust a second promissory note for \$100,000.00. However, Gary admits that he never made a single payment on either note and now claims that he transferred the Fresno Property back to the Trust in lieu of making payments on the \$297,000.00 note.
8. Gary subsequently prepared an accounting dated 12/12/13 (the "Purported 2013 Accounting").
9. The Purported 2013 Accounting shows that the Trust holds a promissory note given by Wade to the Trust in the amount of \$25,000.00. Notwithstanding the fact that Wade owes money to the Trust, the Trust paid Wade \$1,000.00 a month from December 2011 through June 2013. Gary has marked these payments as repayments on loans Wade allegedly gave to the Trust. Moreover, the Purported 2013 Accounting does not show that Wade ever made any payments on the \$25,000.00 note he owed to the Trust.
10. In other words, Wade owed \$25,000.00 to the Trust; Wade paid approximately \$17,000.00 to the Trust; and yet the Trust then paid out approximately \$17,000.00 to Wade in payments of \$1,000.00 a month – the exact amount that should have been paid to the Petitioner.
11. Gary has chosen to characterize the payments to Wade as "loan repayment" from December 2011 – June 2013. However, the final "loan" shown on the Purported 2013 Accounting was allegedly given by Wade to the Trust on 06/21/13 – after the Trust had already "reimbursed" Wade for the alleged loan.
12. Although Gary as trustee holds title to over 600 acres of land in Oklahoma, he has not sold that property and has only collected \$10,000.00 in rent related to that property. Moreover, Gary has allegedly deeded the Fresno Property back to the Trust, but is not paying rent on the property and the Trust has no rental income from it (assuming that the Fresno Property was properly transferred to the Trust).
13. The Purported 2013 Accounting shows an estimated value for the Fresno Property of \$160,000.00. In other words, the Trust previously held a note for \$297,000.00 from Gary, and now only holds a property worth \$160,000.00 after Gary unilaterally transferred the Fresno Property to the Trust – a loss of \$137,000.00 to the Trust. Gary has attempted to get out of a bad land deal for himself personally by transferring the Fresno Property to the Trust, to the detriment of the beneficiaries of the Trust.
14. The Purported 2013 Accounting also shows that Wade owes the Trust under a promissory note in the amount of \$25,000.00, and that Cynthia Barton owes the Trust under a promissory note in the amount of \$30,000.00. Moreover, the Purported 2013 Accounting further shows that neither Wade nor Cynthia have made any payments to the Trust on either of those notes.
15. "A violation by the trustee of any duty that the trustee owes the beneficiary is a breach of trust" (Probate Code § 16400). A trustee has a duty to administer the trust according to the trust instrument. "The trustee has a duty to administer the trust solely in the interest of the beneficiaries". (*Id.* § 16002(a).) **Note:** *Further authority provided in Petition.*
16. Gary has violated numerous duties as trustee. Gary has refused to pay to the Petitioner the \$1,000.00 a month distributive payments she is owed under the terms of the Trust. At the same time, he has made \$1,000.00 a month payments to another beneficiary, Wade. Moreover, Gary has made the payments to Wade under the guise of "loan repayments," when in fact Wade owes money to the Trust and Gary's own accounting shows that Wade is not making payments on his debt.
17. Furthermore, Gary has engaged in self-dealing, insofar as he unilaterally chose to exchange a note worth \$297,000.00 that he owed to the Trust for a property worth \$160,000.00, a loss of \$137,000.00 to the Trust in favor of Gary.
18. Even though he has been trustee since 2011, Gary still has not sold the Oklahoma property in order to make the required payments to the Petitioner. Nonetheless, he has flown Wade to Oklahoma at the expense of the Trust and has paid Wade for unspecified "natural gas research".
19. Moreover, even though Gary identified \$245,000.00 in gold coins and \$28,000.00 as missing cash, Gary does not appear to have taken any steps to recover those assets for the Trust. Yet he continues to list these "assets" as assets of the Trust.

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20. Petitioner has filed a formal petition to remove Gary as trustee, to which he has objected. An evidentiary hearing is set for June 2014. In the meantime, however, Gary is not paying the Petitioner the amounts she is owed under the Trust and he is looking the other way while Wade and Cynthia Barton fail to make payments on the debt they owe to the Trust. He is not maximizing the income to the Trust for the benefits of its beneficiaries and has failed to sell the Oklahoma land in order to fulfill his duties.
21. Accordingly, the Petitioner respectfully asks the Court remove Gary on an interim basis pending the final hearing on the removal petition, and to appoint a neutral third-party to administer the Trust while the parties litigate the removal issues and the accounting issues.
22. Petitioner has spoken to Bruce Bickel, who has stated that he is willing and able to serve as an independent trustee pending the evidentiary hearing and the Court's final decision on the Petition.

Petitioner prays for an Order:

1. Suspending Gary's powers to act as trustee of the Trust pending a final resolution of the Petition;
2. Appointing Bruce Bickel, or another independent fiduciary as decided by the Court, as special trustee to serve as trustee until final resolution of the Petition;
3. For attorney's fees and costs;
4. For any and all other orders that the Court deems proper and just.

First Supplement to Ex Parte Petition to Remove Gary Hamilton as Trustee and Appoint Interim Trustee Pending Final Hearing filed 04/21/14 states:

1. Exigent circumstances exist to appoint an interim trustee while the petition to remove Gary Hamilton as trustee is pending. Although the Court has set a settlement conference for 05/12 and a hearing on the petition for 06/16, those dates will be changed. Counsel for Gary Hamilton, Joanne Sanoian, passed away in March after the dates were set. New counsel Paul Pimentel has substituted in as counsel for Gary Hamilton as of late April. Counsel have conferred and a stipulation will be prepared to continue the trial dates for 120 days to allow Mr. Pimentel to adequately prepare for the hearing.
2. In addition, since the original filing of the petition, Gary Hamilton has prepared an accounting for the trust. The accounting shows that Gary has distributed \$17,000.00 to Wade, even though Wade owed the trust \$25,000.00; and at the same time, Gary has not distributed any funds to petitioner Jamie Thomas. Gary is favoring other beneficiaries over Jamie Thomas.
3. Because Gary is not fulfilling his monthly duties to distribute funds to Jaime Thomas and because this matter will not go to hearing until September at the earliest, exigent circumstances exist that require Gary to be removed pending a final hearing on the removal petition.
4. Consent of Bruce Bickel to act as interim successor trustee is attached.

Declaration of Kurt Van Sciver Regarding Status on Ex Parte Petition to Remove Gary Hamilton as Trustee and Appoint Interim Trustee Pending Final Hearing filed 06/19/14 states: At the hearing on 04/29/14, the trustee, Gary Hamilton, indicated that he would begin paying the \$1,000.00 per month to Jamie Thomas, starting May 1. The trustee further stated, through counsel, that the Clovis property had been sold and the Oklahoma property had been listed. The trustee did not pay Jamie the \$1,000.00 on May 1. Contact was made with Mr. Hamilton's attorney alerting him of the non-payment and requesting copies of the closing statement and the Oklahoma listing agreement. Mr. Hamilton's attorney, Mr. Pimentel, indicated that Mr. Hamilton did not have the correct address for Jamie Thomas. Mr. Pimentel was provided with Ms. Thomas' address. Mr. Pimentel provided a copy of the closing statement for the Clovis property and the Oklahoma listing. As of this date, Jamie Thomas has not received the \$1,000.00 payment for May or June and continues to seek the removal of Gary Hamilton as Trustee during the pendency of this action. The trustee has forgiven a note to himself, constituting a conflict of interest. The Trustee has not collected payments on notes to the Trust from two beneficiaries. The trustee has paid money to another beneficiary, Joel Wade Hamilton, and has flown Wade out to Oklahoma using Trust money, thereby favoring one beneficiary over Jamie. Jamie has suffered and will continue to suffer harm if the trustee is not removed in the interim and a neutral, non-family member appointed to run the Trust until the Court's final decision.

Declarations of Gary Hamilton, Paul J. Pimentel, and Tiffany L. Winchell regarding status on Ex Parte Petition to Remove Gary Hamilton as Trustee and Appoint Interim Trustee Pending Final Hearing filed 06/23/14 states: On around the date of the last hearing (04/29/14) in which it was agreed that trustee Gary Hamilton would begin mailing Jamie Starr \$1,000.00 per month, Mr. Hamilton sent a check to Ms. Starr at the address listed on the Request for Special Notice that she has filed in this matter. In late May, the envelope was returned as undeliverable and upon inspection, it was discovered that Mr. Hamilton made an error in the address. Thereafter, he re-mailed the May check to the address listed on her Request for Special Notice. Approximately 1 week later, he also mailed the June payment to the same address. Neither of those two payments have been returned. On 06/19/14, Mr. Hamilton was provided with a new address for Ms. Starr and he mailed the May and June payments out to the new address that same day.

	On 06/03/13 JAMIE STARR HAMILTON THOMAS , beneficiary, filed a Verified Petition for (1) Removal of Trustee; (2) Accounting; (3) Surcharge; and (4) Approval of Attorney Fees . The matter was continued numerous times and a settlement conference was set for 05/12/14.	NEEDS/PROBLEMS/COMMENTS: <u>CONTINUED FROM 07/22/14</u> Minute Order from 07/22/14 states: Mr. Milnes is appearing as counsel for Jamie Thomas. Declaration of Tiffany L. Winchell Regarding Scheduling Meet and Confer Re: Status filed 08/15/14 states: Messages were left on 08/05/14, 08/08/14 and 08/14/14 with Mr. Milnes office to schedule a meet and confer telephone conference, but no response has been received from Mr. Milnes.
Cont. from 082114	On 04/14/14, JAMIE STARR HAMILTON THOMAS , filed an Ex Parte Petition to Remove Gary Hamilton as Trustee and Appoint Interim Trustee Pending Final Hearing . The matter was set for hearing. Minute Order from 04/29/14 vacated the Settlement Conference set for 05/12/14 and Evidentiary hearing that was set for 06/16/14. The matter was continued to 06/24/14 and then set for this status hearing on 07/22/14.	
Aff.Sub.Wit.		
Verified		
Inventory		
PTC		
Not.Cred.		
Notice of Hrg		
Aff.Mail		
Aff.Pub.		
Sp.Ntc.		
Pers.Serv.		
Conf. Screen		
Letters		
Duties/Supp		
Objections		
Video Receipt		
CI Report		
9202		
Order		
Aff. Posting		
Status Rpt		
UCCJEA		
Citation		
FTB Notice		
		Reviewed by: JF
		Reviewed on: 08/19/14
		Updates:
		Recommendation:
		File 1B – Hamilton